

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
January 11, 2005 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

David Harris, presiding officer, presided. No Board members were present.

Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case
Lic = Licensing Application
RF = Recovery Fund Claim
Trades = Tradesmen Application

C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

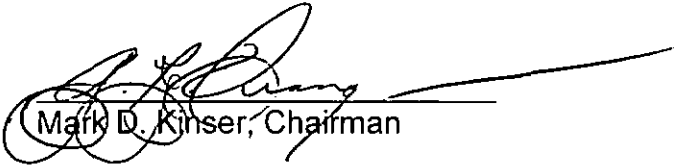
Participants


- | | |
|--|---|
| 1. R C Wheeler Construction Company Inc
File Number 2004-02173 (Disc) | Ron Wheeler – R
David C. Martin – R Atty
Donette Dunfee – C
Robert Neisz – W |
| 2. Specialty Roofing Inc
File Number 2005-00872 (Disc) | Eugene Harris – W |
| 3. Steele Remodeling Service Inc
File Number 2005-00869 (Disc) | Robert Steele – R
Eugene Harris – W |
| 4. T M Daniels Construction LLC
File Number 2004-01047 (Disc) | Matt Daniels – R
Craig Eckstein – C
Trina Daniels – W
Jeff Eckstein – W |
| 5. Bulldog Inc
File Number 2004-02083 (Disc) | Dawn Smith – R |
| 6. Roy Boivin
File Number 2004-02534 (Disc) | Delois Jones – C
Alexander Ricks – W |

- | | |
|---|---|
| 7. Mike White
t/a White's Home Repair
File Number 2004-02081 (Disc) | Walter Lucas – C |
| 8. David T Mathews
t/a David Mathews Painting
File Number 2004-03386 (Disc) | Mathews – R
Arden Caudill – C
Mariana Lightfoot – W |
| 9. Orville R Peters & Gloria J Peters
t/a O L Boogie Peters Jr Plumbing & Heating Company
File Number 2004-02418 (Disc) | Cathy Washburn – C |

The meeting adjourned at 2:40 p.m.

BOARD FOR CONTRACTORS


Mark D. Kinser, Chairman


Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: R C Wheeler Construction Company Inc.

File Number: 2004-02173
License Number: 2701034895

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 8, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to R C Wheeler Construction Company Inc. ("Wheeler") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On January 11, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Ron Wheeler, Responsible Management for Wheeler, Respondent; David Martin ("Martin"), Attorney for Respondent; Donette Dunfee ("Dunfee"), Complainant; Robert Neisz ("Neisz"), Witness; Jennifer Kazzie, Staff Member; and David Harris, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective September 1, 2001)

The contract used in the transaction failed to contain five of the provisions required by the Board.

Martin admitted Wheeler failed to comply with the Board's regulation. Martin also stated Wheeler used the standard real estate agreement, but has since revised his contract. Wheeler provided an addendum that he will use in the future in order to comply with the Board's regulation.

Wheeler's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend that a monetary penalty of \$350.00 be imposed.

Count 2: Board Regulation (Effective September 1, 2001)

In October 2002, Donette Dunfee ("Dunfee") entered into a written contract with Wheeler to construct a new home at the subject property. Dunfee and Wheeler agreed to an addendum to the contract which outlined the specifications. The addendum specified a pantry was to be installed, but Wheeler installed a sheet rock closet instead of a pantry. During construction, Dunfee made several selections regarding upgrades. Wheeler was to price the upgrades and obtain Dunfee's approval prior to installation. Wheeler billed Dunfee for several items installed without Dunfee's approval.

During the IFF, Wheeler stated he charged Dunfee \$100.00 to change the shower door. Wheeler affirmed the changes to the work, but stated he had Dunfee's approval to make the changes. Martin stated Wheeler will now use a standard contract addendum to affect change orders. Wheeler provided a copy of the standard addendum.

During the IFF, Dunfee stated she was promised by her realtor that items, for which she was later billed by the contractor, were in fact included in the original contract.

Wheeler's failure to obtain a written change order for changing the scope of work, materials, and costs is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend that a monetary penalty of \$500.00 be imposed.

Count 3: Board Regulation (Effective September 1, 2001)

The addendum specified the garage was to have an attic. During construction Dunfee learned that the attic was not being installed. Wheeler told Dunfee the attic would be installed. Wheeler failed to provide an attic for the garage. Wheeler also constructed the third bedroom 28-feet shorter than specified in the building plans because a drawing error caused the foundation to be 2-feet short of the required depth.

During the IFF, Wheeler stated the topography of the land created a height differential between the garage floor and the attic. Wheeler stated he did not install the attic in the garage because he could not find a folding ladder that would have reached the floor, which would have been unsafe. Wheeler also stated when he learned of the shortage in the bedroom when he was putting the trusses on.

Neisz provided the Board with evidence that there were ladders of sufficient length, which would have reached from the garage attic to the floor, that were available at the time of construction.

During the IFF, Dunfee stated she did not know about the shortage in the bedroom until the day of closing.

In my opinion, the person doing the layout for the construction should have known about the shortage, prior to the trusses being installed. On the issue of the attic, there is no reason the attic could not have been installed. Dunfee wants her attic, and she should have it.

Wheeler's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend that a monetary penalty of \$1,500.00 be imposed.

Count 4: Board Regulation (Effective September 1, 2001)

The contract specified settlement was to take place on or before January 15, 2003. Wheeler was not able to obtain a building permit until January 24, 2003, because of problems of getting the sewer design approved by Chesterfield County. Dunfee closed on the property on May 7, 2003.

During the IFF, Wheeler stated the delays in the project were due to the local government's permitting process, and not action on his part. Wheeler also stated once he got the permits, he began construction, but ran into delays caused by the weather.

Dunfee stated she was never contacted regarding delays in the construction.

In my opinion, Wheeler should have notified Dunfee of the delays. However, it is possible for projects to be delayed for significant periods due to issues with the local permitting process.

Wheeler's failure to comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. Given the mitigating factor of the permitting issues, however, I recommend no monetary penalty be imposed.

Count 5: Board Regulation (Effective September 1, 2001)

Wheeler promised Dunfee he would complete punch list items. According to Dunfee, Wheeler has failed to complete several items. Wheeler told the Board's agent that some of these items had not been addressed.

During the IFF, Wheeler stated he was willing to address the punch list items, but that he stopped performing work after Dunfee filed a complaint with the Real Estate Board against the agent who sold her the property.

Dunfee stated she attempted to have Wheeler sign off on a list of specific items, but Wheeler declined to do so. Dunfee stated she felt pressured to take Wheeler's word that the items would be completed.

Wheeler's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed.

By: _____

David Harris
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 23, 2004 (revised September 8, 2004)

FILE NUMBER: 2004-02173
RESPONDENT: R C Wheeler Construction Company
LICENSE NUMBER: 2701034895
EXPIRATION: July 31, 2005

SUBMITTED BY: James L. Guffey
APPROVED BY:

COMMENTS:

None.

R C Wheeler Construction Company ("Wheeler") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2701034895).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violations of the Code of Virginia and/or Board's regulations:

BACKGROUND:

On November 19, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Donette Dunfee ("Dunfee") regarding Wheeler. (Exh. C-1)

On October 3, 2002, Dunfee entered into a purchase agreement ("the contract") with Wheeler, in the amount of \$221,900.00, to construct a new home at 8231 Jahnke Road, Chesterfield County, Virginia. (Exh. C-2)

On October 3, 2002, Dunfee and Wheeler agreed to an addendum to the contract. The addendum outlined the specifications. (Exh. C-5)

1. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Wheeler in the transaction failed to contain subsections: (a), (d), (e), (h), and (i). (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

The addendum specified "Pantry to be part of cabinet system with 3 pull out drawers." (Exh. C-5)

Wheeler installed a sheetrock closet instead of a pantry to match the kitchen cabinets. (Exh. C-1)

During the construction, Dunfee made several selections regarding upgrades. Wheeler was to price the upgrades and obtain Dunfee's approval prior to installation. (Exh. C-1)

Wheeler billed Dunfee for installation of the following additional items:

- \$1,000.00 for substituting 5-foot shower door in place of 4-foot shower door;
- \$190.00 for changing sidewalk and garage apron finish to exposed aggregate from brushed;
- \$247.00 for changing double window in master bedroom to triple;
- \$120.00 for installing five fans (builder's allowance included two fans);
- \$200.00 for installing 5-foot shower in place of 4-foot shower and closet;
- \$712.00 for wood floor upgrade in kitchen;
- \$140.00 for installing four TV jacks above the contractor allowance; and
- \$70.00 for installing six telephone jacks above the contractor allowance. (Exh. C-1 and C-3)

Wheeler failed to obtain a written change order for modifications to the scope of the work to be performed, materials, and costs.

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

The addendum specified "Garage to be 16 x 22 with whisper garage opener. Garage to have attic." (Exh. C-5)

During the construction, Robert Neisz ("Neisz"), P.E., observed the work performed by Wheeler. Neisz told Dunfee that the attic over the garage was not being installed. Wheeler told Dunfee the attic would be installed but he complained he could not purchase pull-down stairs of the sufficient length and would have to install a manhole for ladder access. (Exh. C-1)

As of November 18, 2003, Wheeler failed to provide an attic over the garage. (Exh. C-1)

Wheeler also constructed the third bedroom 28 square feet shorter than specified in the building plans. (Exh. C-1 and C-4) Wheeler told Dunfee a drawing error caused the foundation to be 2' short of the required depth. (Exh. C-1)

In a written response dated February 15, 2004, Wheeler stated, "The main house was provided with an attic. The garage ceiling is approximately 14-15 feet above the concrete floor. From a safety standpoint this was not prudent." (Exh. R-1)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

The contract specified "settlement shall take place at _____ on or before Jan 15th 2003 or soon thereafter as title can be examined and necessary documents prepared, allowing a reasonable time for Seller to correct any defects reported by title examiner." (Exh. C-2)

Wheeler hired Mathews Soil Consultants Inc. to investigate the soil of the homesite for the subject property. On July 16, 2002, Mathews Soils Consultants Inc. sent Wheeler a site sketch and recommendations. (Exh. R-2)

On August 29, 2002, Wheeler submitted utilities plans to the Chesterfield County Utilities Department for review. On November 20, 2002, Wheeler submitted revised utilities plans to the Chesterfield County Utilities Department for review. The Chesterfield County Utilities Department requested Wheeler submit approved revised plans. (Exh. R-3)

On January 24, 2003, Wheeler obtained building permit number R102948F000BO for the new construction at the subject property. (Exh. R-5)

On February 10, 2003, the footing inspection was approved. (Exh. R-6)

On April 11, 2003, Wheeler submitted revised utilities plans to the Chesterfield County Utilities Department for review. In a letter dated April 15, 2003, the Chesterfield County Utilities Department advised Wheeler the plans were reviewed with no exceptions. (Exh. R-3)

On May 7, 2003, Dunfee closed on the home. (Exh. C-1)

Wheeler failed to comply with the terms of the contract.

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

Wheeler promised to complete punch list items. (Exh. C-1)

As of November 18, 2003, Wheeler failed to install a concrete pad at the end of the driveway and a screen at the sliding glass door. Wheeler also failed to repair and/or replace the grading, landscaping, crushed drain pipe, master bedroom windowsill, master bath vanity top, and wall in the second bedroom, HVAC switch, duct work, splash blocks under gutter downspouts, and warped crawl space door. (Exh. C-1)

In a written response dated February 15, 2004, Wheeler admitted, "In closing the items that need to be addressed are installing the driveway pad, the driveway gravel, and the settling by the garage apron. The second coat on the vanity spot, the screen on the patio door – slider, and fixing the crawl space door." (Exh. R-1)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Speciality Roofing Inc.

File Number: 2005-00872
License Number: 2705057522

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 13, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Speciality Roofing Inc. ("Speciality") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "No Such Address." The Notice was also mailed, via certified mail, to Speciality at 5603 Roundtree Drive, Woodbridge, Virginia 22193. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On January 11, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Eugene Harris, Witness; Jennifer Kazzie, Staff Member; and David Harris, Presiding Board Member. Neither Michael Allison, Responsible Management for Speciality, nor anyone on behalf of Speciality appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Code of Virginia

In July 2000, the Board issued Class A contractor's license number 2705057522 to Speciality. Michael Allison ("Allison") is the President and Responsible Management for the licensee. Eugene Harris ("Harris") is the Designated Employee, Qualified Individual, and Responsible Management, as Treasurer, for the licensee.

In October 2002, the Board issued Class A contractor's license number 2705070879 to Americana Contractors LLC ("Americana"). Allison is the Qualified Individual and Responsible Management for the licensee. Harris is the Designated Employee for the licensee. On August 26, 2004, the Board revoked Americana's license.

Harris informed the Board's agent that he was a contract employee for both Americana and Speciality between February 15, 2002 and April 15, 2002, and that he was responsible for the 2002 annual reports and tax returns.

During the IFF, Harris stated that he ended his relationship with both Americana and Speciality in April 2002. Harris also stated he has been unable to contact Americana and Speciality. Harris would like to be removed from the Board's records as being identified with these firms.

Based on his testimony, Harris may have been an innocent party as far his involvement in the prior activities of Americana, which led to its license revocation.

Based on the record, however, it appears that while Harris may have been an innocent party, Allison, as President of both Americana and Speciality, is the Responsible Management for both licenses. As such, there is a substantial identity of interest between Americana and Speciality.

Speciality's substantial identity of interest with a contractor whose license was revoked by the Board is a violation of § 54.1-1110 of the Code of Virginia. Therefore I recommend revocation of Speciality's license.

By:

David Harris
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Virginia Board for Contractors
DATE: November 24, 2004 (revised December 3, 2004)

FILE NUMBER: 2005-00869
RESPONDENT: Speciality Roofing Inc.
LICENSE NUMBER: 2705057522
EXPIRATION: July 31, 2004

SUBMITTED BY: Investigator Wayne J. Ozmore, Jr.
APPROVED BY: Bonnie Rhea Adams

COMMENTS:

File number 2005-00869 regarding Steele Remodeling Service Inc. is a companion file.

Speciality Roofing Inc. ("Speciality") was at all times material to this matter a Class A contractor in Virginia (No. 2705057522).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On August 30, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received information from Eric Olson, Executive Director of the Board for Contractors ("the Board") regarding Steele. (Exh. C-1)

1. Code of Virginia

§ 54.1-1110. Grounds for denial or revocation of license or certificate.

The Board may suspend, revoke, or deny renewal of an existing license or certificate, or refuse to issue a license or certificate, to any contractor who is shown to have a substantial identity of interest with a contractor whose license or certificate has been revoked or not renewed by the Board. A substantial identity of interest includes but is not limited to (i) a controlling financial interest by the individual or corporate principals of the contractor whose license or certificate has been revoked or nonrenewed, (ii) substantially identical principals or officers, or (iii) the same designated employee as the contractor whose license or certificate has been revoked or not renewed by the Board.

FACTS:

On July 26, 2000, Speciality was issued Class A contractor's license number 2705057522 as a corporation. (Exh. I-1) Eugene Harris ("Harris"), individual tracking number 2706106959, is the Designated Employee, Qualified Individual, and Responsible Management as Treasurer and Michael Allison ("Allison"), individual tracking number 2706107257, is the Responsible Management as President for license number 2705081026. (Exh. I-1 and I-5)

On October 4, 2002, Americana Contractors LLC ("Americana") was issued Class A contractor's license number 2705070879 as a limited partnership. Harris is the Designated Employee and Allison is the Qualified Individual and Responsible Management as Manager for license number 2705070879. (Exh. 1-5)

On August 26, 2004, the Board for Contractors revoked license number 2705070879. (Exh. 1-2, I-3, I-4, and I-5)

In a written response dated October 8, 2004, Harris stated he was a "Contract employee for February 15th 2002 to April 15th 2002" for both Americana and Speciality. Harris further stated his responsibilities with Americana and Speciality were "2002 annual report and tax returns." (Exh. W-1)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Steele Remodeling Service Inc.

File Number: 2005-00869
License Number: 2705081026

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On December 13, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Steele Remodeling Service Inc. ("Steele") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On January 11, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Robert Steele, Responsible Management for Steele, Respondent; Eugene Harris, Witness; Jennifer Kazzie, Staff Member; and Robert Harris, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Code of Virginia

In October 2002, Americana Contractors LLC ("Americana") was issued Class A contractor's license number 2705070879 by the Board. Eugene Harris ("Harris") is the Designated Employee for the licensee.

In December 2003, Steele was issued Class A contractor's license number 2705081026 by the Board. Harris is the Designated Employee for the licensee.

On August 26, 2004, the Board revoked Americana's license.

Harris informed the Board's agent that he was a contract employee for Americana and between February 15, 2002 and April 15, 2002, and that he was responsible for the 2002 annual reports and tax returns.

During the IFF, Harris stated he began employment with Steele in November 2003, more than a year after he ended his relationship with both Speciality and Americana. Harris also stated he is registered with the IRS, but is not registered as a CPA. Steele stated he had no involvement with Americana.

Based on Harris's testimony, it appears that he only does the bookkeeping and paperwork for Steele. As such, I do not believe there is a substantial identity of interest between Americana and Steele.

Therefore, I recommend that Count 1 of this file be closed with a finding of no violation of § 54.1-1110 of the Code of Virginia.

By: _____
David Harris
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Virginia Board for Contractors
DATE: November 24, 2004 (revised December 3, 2004)

FILE NUMBER: 2005-00869
RESPONDENT: Steele Remodeling Service Inc.
LICENSE NUMBER: 2705081026
EXPIRATION: December 31, 2005

SUBMITTED BY: Investigator Wayne J. Ozmore, Jr.
APPROVED BY: Bonnie Rhea Adams

COMMENTS:

File number 2005-00872 regarding Specialty Roofing Inc. is a companion file.

Steele Remodeling Service Inc. ("Steele") was at all times material to this matter a Class A contractor in Virginia (No. 2705081026).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On August 30, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received information from Eric Olson, Executive Director of the Board for Contractors ("the Board") regarding Steele. (Exh. C-1)

1. Code of Virginia

§ 54.1-1110. Grounds for denial or revocation of license or certificate.

The Board may suspend, revoke, or deny renewal of an existing license or certificate, or refuse to issue a license or certificate, to any contractor who is shown to have a substantial identity of interest with a contractor whose license or certificate has been revoked or not renewed by the Board. A substantial identity of interest includes but is not limited to (i) a controlling financial interest by the individual or corporate principals of the contractor whose license or certificate has been revoked or nonrenewed, (ii) substantially identical principals or officers, or (iii) the same designated employee as the contractor whose license or certificate has been revoked or not renewed by the Board.

FACTS:

On October 4, 2002, Americana Contractors LLC ("Americana") was issued Class A contractor's license number 2705070879. Eugene Harris ("Harris"), individual tracking number 2706106959, is the Designated Employee for license number 2705070879. (Exh. 1-5)

On December 19, 2003, Steele was issued Class A contractor's license number 2705081026 as a corporation. (Exh. I-1) Harris is the Designated Employee for license number 2705081026. (Exh. I-1 and I-5)

On August 26, 2004, the Board for Contractors revoked license number 2705070879. (Exh. 1-2, I-3, I-4, and I-5)

In a written response received October 13, 2004, Harris stated he is a "Contract employee for November 15th 2002 to present." Harris further stated, "My Responsibilities are annual report to the State Corporation Commission tax returns to the IRS and Virginia and accounting consulting." (Exh. W-1)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: T M Daniels Construction LLC

File Number: 2004-01047
License Number: 2705064472

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On September 24, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed; via certified mail, to T M Daniels Construction LLC ("Daniels") to the address of record. The Notice included the Informal Fact-Finding Conference Memorandum, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On November 1, 2004, a letter to reschedule the Informal Fact-Finding Conference ("IFF") was mailed, via certified mail, to Daniels through its attorney. The certified mail was signed and received.

On November 8, 2004, a letter to reschedule the IFF was mailed, via certified mail, to Daniels through its attorney. The certified mail was received.

On January 11, 2005, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Matt Daniels ("Daniels"), Responsible Management for Daniels, Respondent; Trina Daniels, Wife of Respondent; Craig Eckstein ("Eckstein"), Complainant; Jeff Eckstein, Witness; Jennifer Kazzie, Staff Member; and David Harris, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the IFF Memorandum:

Count 1: Board Regulation (Effective September 1, 2001)

In September 2002, Daniels submitted an estimate, in the amount of \$304,000.00 to Craig Eckstein to construct a new home at the subject property. Eckstein told Daniels he could not afford to construct the home at that price. Daniels lowered the price of the estimate to \$278,251.15, and told Eckstein the home could easily be built for

\$278,000.00. Eckstein signed the contract with Daniels to build the home. By June 2003, Eckstein had paid Daniels a total of \$257,690.03, but the house was only 60% completed. Eckstein fired Daniels and completed the work himself for an additional \$130,000.00.

During the IFF, Eckstein stated Daniels told him the reduced contract price was attributable to materials which could be purchased at a lower price. Eckstein stated when he met with Daniels in June 2003, Daniels told him that he would not have agreed to a fixed price contract. Eckstein also stated he was receiving weekly invoices from Daniels regarding the labor and material costs of the work.

During the IFF, Daniels stated that there was not a contract, only an estimate he provided to Eckstein. Daniels stated the estimate was for a basic home only, but Eckstein wanted "only the best." Daniels also stated Eckstein demanded Daniels work during bad weather, which created delays, and increased the labor costs of the work. This caused the project to go over budget.

Based on the record, the estimate contained contract language and was signed by both parties. Despite Daniels's claims to the contrary, the estimate stands in place of a contract for the work. The estimate used in the transaction was for work to be performed on a time and materials basis. Given that, and the fact that Eckstein was billed weekly for labor and materials, Eckstein should have been aware of the possibility that the work would go over budget. I believe Daniels did not intentionally misrepresent himself to Eckstein in order to obtain the contract.

Therefore, I recommend that Count 1 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.17.

Count 2: Board Regulation (Effective September 1, 2001)

The contract used in the transaction failed to contain three of the provisions required by the Board. Daniels's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend that a monetary penalty of \$350.00 and remedial education be imposed.

The Board's Basic Contractor Licensing course (remedial education) must be completed by a member of the firm's responsible management within six (6) months of the effective date of this order.

Count 3: Board Regulation (Effective September 1, 2001)

The contract specified that any changes from the written contract were to be executed only by way of a written order and approval from Eckstein. During construction, Eckstein requested Daniels change the dimensions of the front porch and add a fireplace.

During the IFF, Eckstein affirmed that changes to the dimensions of the front porch, and the addition of a fireplace, as well as a small wall in the bathroom, were agreed to, without a written change order.

Daniels failed to obtain written change orders to modify the scope of work, materials, and costs of the contract. Daniels's failure to obtain written change orders is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend that a monetary penalty of \$500.00 be imposed.

Count 4: Board Regulation (Effective September 1, 2001)

After Daniels performed work at the subject property, Eckstein observed a sagging floor in the dining and kitchen areas, and noticed a leak in a retaining wall that caused water to leak into the basement. Eckstein hired a contractor to look at these problems. The contractor told Eckstein it would cost \$3,750.00 to make the needed repairs.

During the IFF, Eckstein stated the sag in the floor was over a main beam. Eckstein also stated when repairs on the floor were attempted, the drywall began to crack. In order to prevent continued cracking of the drywall, Eckstein decided to leave the floor as is.

Daniels affirmed Eckstein's testimony regarding the sagging of the floor and the cracking of the drywall. Daniels also stated there was a missing piece which caused the floor to sag.

Daniels's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed.

By: _____
David Harris
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
ENFORCEMENT DIVISION
3600 WEST BROAD STREET
RICHMOND, VIRGINIA 23230-4917

INFORMAL FACT-FINDING CONFERENCE MEMORANDUM

BOARD: Contractors
DATE: June 30, 2004 (revised August 26, 2004)
RE: 2004-01047; T. M. Daniels Construction LLC

BACKGROUND:

On September 4, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Craig Eckstein ("Eckstein") regarding T M Daniels Construction LLC ("Daniels"). (Exh. C-1)

On September 6, 2002, Daniels submitted an estimate, in the amount of \$304,000.00, to Eckstein, to construct a new home at 169 Lemon Lane, Hardy, Virginia 24101. (Exh. C-3)

On September 17, 2002, Eckstein entered into a written contract with Daniels, in the amount of \$278,251.15, to construct a new home at the subject property. (Exh. C-2 and R-2)

In June 2003, Eckstein fired Daniels because the house was only 60% complete after Eckstein paid Daniels \$257,690.03. (Exh. I-2 and C-6) Eckstein finished the house himself for an additional \$130,000.00. (Exh. I-2)

On September 7, 2003, Eckstein took possession of the subject property. (Exh. C-7 and C-10)

On October 3, 2003, a Certificate of Occupancy was issued for the subject property. (Exh. I-4)

1. Violation of Code of Virginia or Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260.B.17

FACTS:

After receiving the September 6, 2002, Eckstein advised Daniels that he could not afford to build the house for \$304,000.00. (Exh. C-1)

According to Eckstein, Daniels' reason for the lower price on the September 17, 2002, estimate and contract was that Daniels was finding cheaper ways to buy materials. (Exh. C-1)

Eckstein told Daniels that he could not afford to pay over the \$278,251.15. At the time of signing the contract, Daniels told Eckstein the home could easily be built for \$278,000.00. (Exh. C-1)

2. Violation of Code of Virginia or Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260.B.9

FACTS:

The contract used by Daniels in the transaction failed to contain subsections: (e) a statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of cancellation rights, and (h) contractor's license number, expiration date, class of license, and classifications or specialty services. (Exh. C-2 and R-2)

3. Violation of Code of Virginia or Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260.B.31

FACTS:

The contract specified "Any alteration or deviation from above specifications involving extra costs, will be executed ONLY upon written orders and approval from Mr. Eckstein, and will become an extra charge over and above the agreement." (Exh. C-2 and R-2)

During the construction, Eckstein requested Daniels change the dimensions of the front porch and add a fireplace. (Exh. I-2)

In a written response dated May 5, 2004, Barry M. Tatel ("Tatel"), attorney representing Daniels, stated "a copy of the house plans were provided to T.M. Daniels Construction Company, LLC by Mr. and Mrs. Eckstein in order to construct their home, and there have been significant and numerous design changes to the Eckstein house which are noted on the house plans." (Exh. R-1)

Daniels failed to use written change orders for the modifications to scope of the work to be performed, materials, and costs of the original contract.

4. Violation of Code of Virginia or Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260.B.5

FACTS:

After Daniels performed work at the subject property, Eckstein observed a sagging floor in the dining and kitchen areas and noticed a leak in the retaining wall that caused water to leak into the basement. (Exh. C-1 and C-7)

On March 2, 2004, Leonard Young ("Young"), t/a Leonard Young Construction, provided Eckstein an estimate, in the amount of \$3,750.00, to repair a sag in the floor in the kitchen/dining room and fix water leak at retaining wall to foundation. (Exh. C-8)

Young observed a ¾ inch dip in the floor covering a space approximately 12' x 4'. Young believed the problem developed because the truss system where the floors joined were not level. (Exh. I-3)

On June 15, 2004, G. Harris Warner Jr. ("Warner"), attorney representing Eckstein, sent a letter to Daniels notifying Daniels of warranty items in need of repair. Warner requested Daniels correct the foundation and floors in the kitchen and dining room. (Exh. C-10)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Bulldog Inc.

File Number: 2004-02083
License Number: 2705062512

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Bulldog Inc. ("Bulldog") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 11, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Dawn Carol Smith ("Smith"), Responsible Management for Bulldog, Respondent; Complainant; Jennifer Kazzie, Staff Member; and David Harris, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

In May 2003, Joachim and Hilda Harnack ("the Harnacks") entered into a written contract with Bulldog to remove and dispose of a residence at the subject property. The contract was not signed by Bulldog. In September 2003, Bulldog was paid towards the contract, and began work.

Based on the record, the contract was executed. Therefore, I recommend that Count 1 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.8.

Count 2: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain four of the required provisions.

During the IFF, Smith stated Bulldog used a standard proposal that it uses with general contractors, as Bulldog does most of its work as a subcontractor. Smith provided the Board with a copy of revised contract that Bulldog will use in the future for its general contracting.

Bulldog's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend that a monetary penalty of \$350.00 be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

The contract used in the transaction provided that all change orders were to be fully executed before extra work was to begin. At the end of September 2003, Bulldog provided the Harnacks with a statement that reflected additional costs and work performed by Bulldog. The Harnacks disputed the extra charges, claiming they had not approved any change orders, and that the additional work was not discussed with the Harnacks before being performed.

Based on the record, the Harnacks dealt with Rick Wilson and "Cindy", who managed the project for the Harnacks.

During the IFF, Smith stated that Rick Wilson and "Cindy" managed the project for the Harnacks. Smith also stated both of them eventually ran-off with business documents and financial information, and that she is presently pursuing civil and criminal action against each.

Smith provided the Board with a copy of a standard change order form that it will now use in the future.

Bulldog's failure to obtain signed change orders for a modification to the scope and cost of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend that a monetary penalty of \$350.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

In October 2003, the Harnacks informed Bulldog regarding footings found in the ground that should have been removed. The Harnacks hired another contractor to complete the work. In February 2004, the Harnacks obtained a judgment against Bulldog. Bulldog has failed to satisfy the judgment.

During the IFF, Smith stated in April 2004 Bulldog filed for bankruptcy because it did not have the finances to pay the judgment. Smith stated she listed the judgment as a valid debt against Bulldog.

Bulldog's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. However, since Bulldog filed for bankruptcy, it was not permitted to satisfy the judgment. Therefore, I recommend that no monetary penalty be imposed.

By:

David Harris
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: September 9, 2004 (revised September 16, 2004)

FILE NUMBER: 2004-02083
RESPONDENT: Bulldog, Inc.
LICENSE NUMBER: 2705062512
EXPIRATION: April 30, 2005

SUBMITTED BY: Carolyn D. Wright
APPROVED BY:

COMMENTS:

Bulldog has filed Chapter 11 bankruptcy.

Bulldog, Inc. ("Bulldog") was at all times material to this matter a licensed contractor in Virginia (No. 2705062512).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation of the Code of Virginia and/or Board's regulation:

BACKGROUND:

On November 13, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Joachim and Hilda Harnack ("the Harnacks") regarding Bulldog. (Exh. C-1)

On May 15, 2003, the Harnacks entered into a written contract with Bulldog, in the amount of \$9,860.00, for the removal and disposal of a 1800 sf residence and foundation at 1226 Ranleigh Road, Manassas, Virginia. The contract was signed by Hilda Harnack but not Bulldog. (Exh. C-2)

On September 9, 2003, the Harnacks paid Bulldog \$4,930.00. (Exh. C-4)

On September 9, 2003, Bulldog commenced work. (Exh. C-6)

On October 22, 2003, the Harnacks sent Bulldog a letter regarding footings found in the ground that should have been removed. (Exh. C-6) The Harnacks hired another contractor to complete the work. (Exh. C-1, C-4, C-6, and I-2)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

Bulldog failed to sign the contract prior to the commencement of work or acceptance of payments.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by Bulldog in the transaction failed to contain subsections: a, e, f, and h. (Exh. C-2)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

The contract specified "ALL CHANGE ORDERS WILL BE SIGNED BY BOTH PARTIES BEFORE ANY SUCH EXTRA WORK SHALL COMMENCE AND SHALL BE PAID IN FULL, WITHIN 30 DAYS OF CHANGE ORDER DATE." (Exh. C-2)

On September 30, 2003, Bulldog provided the Harnacks with a statement, in the amount of \$11,274.67. (Exh. C-4)

On October 8, 2003, the Harnacks sent Bulldog a letter regarding the extra charges. The Harnacks dispute the change orders were approved and stated the additional work was not discussed with the Harnacks before being performed. (Exh. C-6)

Bulldog failed to obtain written change orders, signed by all parties, for a modification to the scope of the work to be performed and the cost of the original contract.

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On February 9, 2004, in the Fairfax County General District Court, the Harnacks were awarded a \$4,235.00 judgment against Bulldog. As of August 13, 2004, Bulldog failed to satisfy the judgment. (Exh. I-1)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Roy Boivin

File Number: 2004-02534
License Number: 2705079676

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Roy Boivin ("Boivin") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was not returned by the United States Postal Service.

On January 11, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Delois Jones ("Jones"), Complainant; Alexander Ricks ("Ricks"), Witness; Jennifer Kazzie, Staff Member; and David Harris, Presiding Board Member. Neither Roy Boivin, Respondent, nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

In May 2003, Jones hired Boivin to construct a room addition at the subject property. Boivin performed work until June 2003. Boivin failed to complete the work. During this time, Boivin was not a licensed contractor. Boivin later obtained his license in October 2003. In June 2004, Jones obtained a judgment against Boivin.

During the IFF, Jones stated Boivin has not satisfied the judgment. Jones also stated the last time she spoke to Boivin was in August 2004.

Boivin's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

By: _____

David Harris
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: July 21, 2004 (revised October 15, 2004)

FILE NUMBER: 2004-02534
RESPONDENT: Roy Boivin, t/a Roy Boivin
LICENSE NUMBER: 2705079676
EXPIRATION: October 31, 2005

SUBMITTED BY: Valerie J. Matney
APPROVED BY: David C. Dorner

COMMENTS:

Roy Boivin ("Boivin") was unlicensed on May 21, 2003, when he contracted with Delois Jones ("Jones") to build an 11' x 14' room addition at 1017 Dubose Drive, Norfolk, Virginia. Boivin's last day on the job was June 1, 2003. Jones agreed to allow Boivin to complete the job if he became licensed. Boivin subsequently became licensed on October 22, 2003, but did not return to the job. Jones hired another contractor to complete the room addition. The only issue for which the Board has jurisdiction is an unpaid judgment Jones obtained against Boivin during the time he was licensed.

Roy Boivin ("Boivin") was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705079676).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On December 18, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Delois Jones ("Jones") regarding Roy Boivin ("Boivin"). (Exh. C-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On June 11, 2004, in the Norfolk Circuit Court, Jones was awarded a \$32,000.00 judgment, plus interest and costs, against Boivin. (Exh. I-2)

As of July 16, 2004, Boivin failed to satisfy the judgment. (Exh. I-3)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Mike White, t/a White's Home Repair

File Number: 2004-02081
License Number: 2705061494

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Mike White ("White"), t/a White's Home Repair to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On January 11, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Walter Lucas ("Lucas"), Complainant; Jennifer Kazzie, Staff Member; and David Harris, Presiding Board Member. Neither Mike White, Respondent, nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

In July 2003, White contracted with Roger and Cawly Hardy ("the Hardys") to build an addition at the subject property. White obtained a building permit for the project, which stated a project value of \$6,800.00 for labor only. Later that month, White applied to amend the permit to construct a second floor to the addition at the subject property. The amended permit added an additional cost of \$4,000.00 for the project.

During the IFF, Lucas stated the amended permit was not issued because White did not have the proper license to perform the work. Lucas also stated he notified White of the improper licensing and gave White several opportunities to obtain a Class B license; however, White took the exam three times and failed the exam. Lucas extended another opportunity to White, but White told Lucas that he did not have time for this stuff.

White's action of practicing in a class of license for which he is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$1,000.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

By: _____

David Harris
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: July 22, 2004 (revised October 14, 2004)

FILE NUMBER: 2004-02081
RESPONDENT: Mike White, t/a White's Home Repair
LICENSE NUMBER: 2705061494
EXPIRATION: April 30, 2005

SUBMITTED BY: James L. Guffey
APPROVED BY:

COMMENTS:

None.

Mike White ("White"), t/a White's Home Repair, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705061494).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On November 13, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Walter Lucas ("Lucas"), Building Inspector for the City of Danville, regarding White. (Exh. C-1)

On July 2, 2003, Roger and Cawly Hardy ("the Hardys") entered into a written contract with White, in the amount of \$6,200.00 for labor only, to build an addition at 323 Cedarbrook Drive, Danville, Virginia. (Exh. R-2)

On April 18, 2001, White was issued Class C Contractor's license number 2705061494. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

On July 2, 2003, White obtained building permit number B030324 to construct a 20 x 28 addition, in the amount of \$6,800.00 for labor only, at the subject property. (Exh. C-2 and R-3)

On July 28, 2003, White obtained building permit number X030650B to amend permit B030324 and add a second floor to the 20 x 28 addition at the subject property. The amended improvement cost increased by \$4,000.00. (Exh. C-3)

White took the Class B contractor's exam several times but did not pass. (Exh. R-4)

White practiced in a class of license for which he is not licensed.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: David T. Mathews, t/a David Mathews Painting

File Number: 2004-03386
License Number: 2701022110

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to David T. Mathews ("Mathews"), t/a David Mathews Painting to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 11, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: David Mathews, Respondent; Fred Caudil ("Caudil"), Complainant; Mariana Lightfoot ("Lightfoot"), Witness; Jennifer Kazzie, Staff Member; and David Harris, Presiding Board Member.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

The estimate provided to Fred and Arden Caudil ("the Caudils"), the contract used in the transaction, and the invoices provided to the Caudils during the project reflected the name Mathews Corporation. The license was issued to Mathews as a sole proprietorship under the trade name David Mathews Painting.

During the IFF, Mathews stated he filed a name change, but was informed that he need to obtain a new license because it was a change in business entity. Mathews also stated he has not registered with the State Corporation Commission. Mathews intends to change his license in order to contract under the name Mathews Corporation.

Mathews's failure to operate in the name in which his license was issued is a violation of Board Regulation 18 VAC 50-22-230.A. Therefore, I recommend a monetary penalty of \$350.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 2: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain seven of the provisions required by the Board.

During the IFF, Mathews stated he does not have a standard contract and that the consumers normally write the contract. Mathews also stated he is now aware of the contract requirements.

Mathews's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$350.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective January 1, 2003)

The contract indicated Mathews would furnish permits. In March 2003, Mathews began work at the subject property without obtaining a required permit. Mathews told the Board's agent he did not obtain the permit because the Caudils were the general contractors.

During the IFF, Mathews stated he thought the scope of the work was minimal and did not require a permit. Mathews also stated he has not obtained a permit because he was not allowed to go back and perform any further work on the subject property.

In my opinion, Mathews should have known permits were required because the work involved plumbing and electrical and the project exceeded \$40,000.00. Mathews's failure to obtain a required building permit is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

An invoice Mathews provided to the Caudils indicated rough-in plumbing and electrical work was performed at the subject property. Mathews informed the Board's agent that Mathews personally performed all of the electrical and plumbing work at the subject property. Mathews's license does not permit him to perform electrical and plumbing work.

During the IFF, Mathews stated he thought the scope of the work was minimal. Mathews also stated he was aware his license did not allow him to perform plumbing and electrical; however Mathews performed the plumbing and electrical work himself.

Mathews's action of practicing in a license classification and specialty service for which he is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

By: _____

David Harris
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: June 15, 2004 (revised October 18, 2004)

FILE NUMBER: 2004-03386
RESPONDENT: David T. Mathews, t/a David Mathews Painting
LICENSE NUMBER: 2701022110
EXPIRATION: August 31, 2006

SUBMITTED BY: Sherell Queen
APPROVED BY: Linda J. Boswell

COMMENTS:

None.

David T. Mathews ("Mathews"), t/a David Mathews Painting, was at all times material to this matter a licensed Class A contractor in Virginia (No. 2701022110).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On February 18, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Fred and Arden Caudill ("the Caudills") regarding Dave Mathews and Mathews Corporation. (Exh. C-1)

On January 11, 2003, Mathews Corporation provided the Caudills with a written estimate to renovate an upstairs bath, kitchen, and downstairs bath at 1534 Piney Hill Road, Luray, Virginia. The estimate was signed by David Mathews. (Exh. C-2)

On February 8, 2003, the Caudills entered into a written contract with Mathews Corporation, in the amount of \$40,080.00 with the option of six additional items for \$3,700.00, to perform renovations at the subject property. The contract indicated "Lic. # 022110A" and a signature line for David Mathews, President. (Exh. C-2)

On February 8, 2003, the Caudills paid David Mathews \$4,088.00 by check. All future payments were paid to Mathews Corporation. (Exh. C-3)

On or about March 1, 2003, Mathews commenced work. (Exh. C-5) In November 2003, the Caudills terminated Mathews. (Exh. C-1)

On April 19, 1982, Mathews was issued Class A Contractor's license number 2701022110 as a sole proprietorship, with the building ("BLD") classification and the lead abatement contracting ("LAC"), home improvement contracting ("HIC"), and commercial improvement contracting ("CIC") specialties. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

FACTS:

On March 14, 2003, Mathews provided the Caudills with an invoice, in the amount of \$4,800.00, for the demolition of the upstairs bath, kitchen, and downstairs bath. The invoice indicated the name David Mathews Painting Inc., but the name was crossed out and Mathews Corporation was typed on the invoice. (Exh. C-4)

Between March 28, 2003 and November 28, 2003, Mathews provided the Caudills with several invoices, which all indicated Mathews Corp. (Exh. C-4)

Mathews failed to operate in the name in which the license is issued.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Mathews in the transaction failed to contain subsections: (a); (c) a listing of specified materials; (d); (e); (f); (h) contractor's license expiration date, and classifications or specialty services; and (i). (Exh. C-2)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

The contract specified Mathews would "furnish all supervision, labor, permits . . ." (Exh. C-2)

In a written response dated April 5, 2004, Mathews stated "This is the first time I did not obtain a Building Permit. I felt it was not needed for the initial work and I did not check to see if it was needed. Since that time I have talked with the Building Inspector about this matter." (Exh. R-1)

On April 7, 2004, Mathews stated he did not obtain a permit prior to starting the job because the Caudills were the general contractors. (Exh. I-2)

Mathews failed to obtain a required building permit prior to the commencement of work, in violation of Section 111.0 of the Virginia Uniform Statewide Building Code. (Exh. W-1)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

In an invoice dated June 27, 2003, Mathews indicated rough-in plumbing and electrical work was performed at the subject property. (Exh. C-4)

On April 7, 2004, Mathews stated he personally performed all of the electrical and plumbing work. (Exh. I-2)

Mathews practiced in a classification and specialty service for which he is not licensed.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Orville L. Peters & Gloria J. Peters, t/a O L Boogie Peters Jr. Plumbing & Heating Company

File Number: 2004-02418
License Number: 2705015133

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Orville L. Peters & Gloria J. Peters ("Peters"), t/a O L Boogie Peters Jr. Plumbing & Heating Company to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On January 11, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Cathy Washburn ("Washburn"), Complainant; Jennifer Kazzie, Staff Member; and David Harris, Presiding Board Member. Neither Orville Peters, Respondent, nor anyone on behalf of Peters appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

The contracts used in the transaction reflected the name Peters Plumbing Heating & Cooling Inc. The license was issued to Peters as a partnership, under the trade name O.L. Boogie Peters Jr. Plumbing & Heating Company. Peters's failure to operate in the name in which the license issued is a violation of Board Regulation 18 VAC 50-22-230.A. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003) (TWO COUNTS)

The contracts used in the transaction failed to contain six of the provisions required by the Board. Peters's failure to include minimum provisions in the contract is a violation of

Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$500.00 be imposed for each count, for a total of \$1,000.00.

Count 3: Board Regulation (Effective January 1, 2003)

Peters failed to obtain the required permits and final inspections for work performed at the subject property.

During the IFF, Washburn stated she was not aware Peters failed to obtain permits and he never asked her to obtain permits. Peters's failure to obtain permits and inspections is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

In October 2003, Washburn entered into a contract with Peters to replace the heating and air conditioning system at the subject property. Peters performed the work. After Peters had performed the work, Washburn discovered the heating and air conditioning unit was not working properly. Peters agreed to return to the subject property to install replacement parts, but failed to do so. Washburn later discovered the gas line moved by Peters was hooked up incorrectly, and the shut-off valve leaked gas.

During the IFF, Washburn stated Peters has not returned to the property to correct the heating and air conditioning unit or the gas line. Washburn also stated she hired someone else to fix the gas line and the heating and air conditioning unit is only partially fixed.

Peters's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$2,500.00 be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

In February 2004, the Board's agent requested, both verbally and in writing, that Peters provide a complete copy of the contracts entered into with Washburn, his judgment appeal documents, and his attorney's letter to Washburn. Peters failed to provide the Board's agent with the requested information.

Peters's refusal or failure to produce the documents requested by the Board's agent is a violation of Board Regulation 18 VAC 50-22-260.B.12. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

Count 6: Board Regulation (Effective January 1, 2003)

In December 2003, the Board's agent requested Peters provide a written response and supporting documents to the complaint filed with the Board. Peters told the Board's agent he mailed a written response, and placed the matter in his attorney's hands. In February 2004, the Board's agent advised Peters the written response and supporting documents had not been received. The Board's agent again requested a written response to the complaint, along with supporting documents. Peters failed to provide the written response and supporting documentation.

Peters's failure to provide complete information to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

Count 7: Board Regulation (Effective January 1, 2003)

In January 2004, Washburn obtained a judgment against Peters. Peters informed the Board's agent that he was not going to pay the judgment because he appealed the judgment. Peters has failed to satisfy the judgment.

During the IFF, Washburn stated she has tried to get Peters to satisfy the judgment, but Peters has not satisfied the judgment. Washburn also stated she thinks Peters filed for bankruptcy.

Peters's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$2,500.00 be imposed.

By: _____
David Harris
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Contractors
DATE: March 26, 2004 (revised October 18, 2004)

FILE NUMBER: 2004-02148
RESPONDENT: Orville L. Peters & Gloria J. Peters, t/a O.L. Boogie Peters
Jr. Plumbing & Heating Company

LICENSE NUMBER: 2705015133
EXPIRATION: September 30, 2004

SUBMITTED BY: Shelby Smith-Hill
APPROVED BY: David Dorner

COMMENTS:

None.

Orville L. Peters & Gloria J. Peters ("Peters"), t/a O.L. Boogie Peters Jr. Plumbing & Heating Company, was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705015133).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On December 9, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Cathy Washburn ("Washburn") regarding O.L. Peters Heating & Plumbing Inc. (Exh. C-1)

On October 20, 2003, Washburn entered into a written contract with Peters Plumbing Heating & Cooling Inc., in the amount of \$8,946.86, to replace the heating and air conditioning system at 154 Cedar Road, Poquoson, Virginia. The contract was signed by Washburn. (Exh. C-2) (NOTE: D. Mann Construction is named on the contract because

D. Mann Construction was also working at the subject property and was Peters' point of contact on the job.)

On October 20, 2003, Washburn paid Peters \$4,000.00 by check. (Exh. C-1)

Between October 20, 2003 and November 13, 2003, Peters removed old ductwork, reinstalled new ductwork, and installed a 4-ton unit. On November 13, 2003, Peters told Washburn the job was finished. (Exh. C-1)

On November 13, 2003, Washburn entered into a written contract with Peters Plumbing Heating & Cooling Inc., in the amount of \$1,200.00, to remove kitchen plumbing, install a new vent, icebreaker box, relocate the gas line, and connect a sink, dishwasher, and garbage disposal at the subject property. (Exh. C-3)

On November 13, 2003, Washburn paid Peters \$5,546.86 by check. (Exh. C-1)

On September 8, 1992, Peters was issued Class B Contractor's license number 2705015133 as a partnership. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

FACTS:

Peters failed to operate in the name in which the license is issued.

2. Board Regulation (Effective January 1, 2003) (TWO COUNTS)

18 VAC 50-22-260. Filing of charges; prohibited acts.

- B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
- a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays

- caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
- e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contracts used by Peters in the transaction failed to contain subsections: (a), (d), (e), (f), (h), and (i). (Exh. C-2 and C-3)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

- 6. Misconduct in the practice of contracting.

FACTS:

As of January 16, 2004, Peters failed to obtain required permits and final inspections for the work performed at the subject property, in violation of Sections 105, 111, and 115.4 of the Uniform Statewide Building Code. (Exh. W-1)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

- 15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

On the evening of November 13, 2003, Washburn discovered the heating and air conditioning unit was not working properly. On November 14, 2003, Washburn left a message for Peters regarding the malfunctioning unit. On November 18, 2003, Peters left Washburn a voice mail regarding the repair of the unit. Between November 24, 2003 and November 26, 2003, Washburn left several messages for Peters regarding repair of the unit. On November 28, 2003, Peters scheduled an appointment for December 8,

2003, to return to the subject property and install replacement parts but Peters failed to appear for the appointment. (Exh. C-1)

On December 9, 2003, Washburn discovered the gas line moved by Peters was hooked up incorrectly and the shut-off valve leaked gas. (Exh. C-1)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

FACTS:

On February 19, 2004, Investigator Shelby Smith-Hill, the Board's agent, verbally requested Peters provide a complete copy of the contracts entered into with Washburn, his judgment appeal documents, and his attorney's letter to Washburn. Peters told the Board's agent he would mail the information on February 20, 2004. (Exh. I-5)

On February 19, 2004, Investigator Shelby Smith-Hill, the Board's agent, made a written request to Peters at the address of request of 2016 West Road, Chesapeake, Virginia 23323, requesting a complete and legible copy of the contract entered into with Washburn, proof of payments received, and proof of an appeal of the judgment, if appealed. The Board's agent requested the documents be received by March 1, 2004. (Exh. I-4)

On March 1, 2004, the Board's agent left a message for Peters because she had not received the written response and supporting documentation. On March 19, 2004, the Board's agent left a second message for Peters because she had not received the written response and support documentation. (Exh. I-5)

As of March 26, 2004, Peters refused or failed, upon request, to produce to the Board's agent the documents.

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

FACTS:

On December 29, 2003, the Board's agent made a written request to Peters at the address of record of 2016 West Road, Chesapeake, Virginia 23323, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the written response be received by January 12, 2004. (Exh. I-3)

On January 14, 2004, Peters told the Board's agent he mailed a written response and placed the matter in his attorney's hands. (Exh. I-5)

On February 19, 2004, the Board's agent contacted Peters and advised him that she did not receive the written response and supporting documentation. Peters told the Board's agent he was in the process of changing his business name to Bluewater and would provide the Board's agent with the information once the name change process was complete. The Board's agent verbally requested Peters provide a copy of his company registration information with the SCC, his written response, a complete copy of the contracts entered into with Washburn, his judgment appeal documents, and Comfort's letter to Washburn. Peters told the Board's agent he would mail the information on February 20, 2004. (Exh. I-5)

On February 19, 2004, the Board's agent made a second written request to Peters at the address of request of 2016 West Road, Chesapeake, Virginia 23323, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by March 1, 2004. (Exh. I-4)

On March 1, 2004, the Board's agent left a message for Peters because she had not received the written response and supporting documentation. On March 19, 2004, the Board's agent left a second message for Peters because she had not received the written response and support documentation. (Exh. I-5)

As of March 26, 2004, Peters failed to provide complete information to an investigator seeking information in the investigation of a complaint filed with the Board.

7. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On January 13, 2004, in the York County General District Court, Washburn was awarded a \$7,360.52 judgment against Peters. (Exh. I-2)

On February 19, 2004, Peters stated he was not going to pay the judgment issued against him because he appealed the judgment. (Exh. I-5)

As of March 3, 2004, Peters failed to satisfy the judgment. (Exh. I-2)

**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT**

**TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government**

1. Name: David Harris
2. Title: Presiding Board Member
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on January 11, 2005
5. Nature of Personal Interest Affected by Transaction: _____

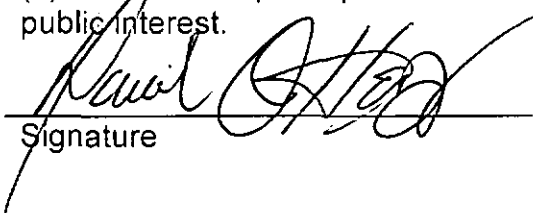
6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Signature

Date



1/11/05